




Atty Docket No. 29985-011855

#5
2/20/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Stephen Porter)	Certificate of First Class Mailing
)	
Serial No. 09/933,316)	I hereby certify that this paper is being
)	filed by First Class Mail in an envelope,
Filed: August 20, 2001)	postage prepaid, addressed to the
)	Commissioner for Patents, Washington,
Title: Embolic Compositions with Non- Cyanoacrylate Rheology Modifying Agents)	DC 20231.
)	
Group Art Unit: 1617)	February 3, 2003
)	
Examiner: Shahnam J. Sharareh)	
)	Mark H. Hopkins, Ph.D.

RECEIVED
FEB 11 2003
TECH CENTER 1600/2900

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner For Patents
Washington, DC 20231

Dear Sir:

This paper is filed in response to the Restriction Requirement dated December 3, 2002 restricting the claims of the application. A petition for a one-month extension of time and the requisite fee to extend the period for response to February 3, 2003 is filed herewith.

I. Response to Restriction Requirement

The Restriction Requirement set forth a three-way restriction requirement as follows:

Group I:	Claims 1-28, drawn to compositions;
Group II:	Claims 29-33, drawn to tissue bulking methods; and
Group III:	Claims 34-47 drawn to methods of embolizing

vascular space. Applicants provisionally elect the invention of Group I, *i.e.*, claims 1-28. This election is made with traverse.

II. Traversal of Restriction Requirement

Applicant requests that the restriction between Groups I and II be reconsidered because the Examiner has not shown an example where the process of tissue bulking of the claims of Group II can be practiced by another materially different product for the

compositions of the claims of Group I. As the Examiner points out M.P.E.P. § 806(h) provides:

A product and process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of using as claimed can be practiced with another materially different product; or (B) the product as claimed can be used in a materially different process. The burden is on the examiner to provide an example.

Applicant respectfully submits that the Examiner has not shown that the criteria for a proper restriction between Groups I and II have been satisfied. The Examiner has shown that Evans, U.S. Patent No. 5,702,361 ("Evans") discloses that a method of embolizing a vascular site can be practiced with another materially different product. However, Evans does not disclose a method of tissue bulking as the Examiner contends. Therefore, the Examiner has not provided an example of a method of tissue bulking using another materially different product as required by M.P.E.P. 806.05(h). In light of the above remarks, applicant respectfully requests that the Patent Office reconsider and withdraw the restriction requirement between elected Group I and II.


It is submitted that all claims are now in condition for allowance. Applicants respectfully request an early and favorable notification thereof. Should the Examiner wish to discuss this response in further detail in an effort to advance this application toward allowance, the Applicants invite the Examiner to telephone the undersigned representative at the indicated number.

Respectfully submitted,

MARSHALL, GERSTEIN, & BORUN
6300 Sears Tower
233 S. Wacker Drive
Chicago, Illinois 60606-6402
(312) 474-6300
Attorneys for Applicant

February 3, 2003

By



Mark H. Hopkins, Ph.D.
Registration No. 44,775